

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JOSEPH HUSSELL and A.H.,

Plaintiffs,

v.

Civil Action No. 2:19-cv-00101

ROBERT BOGGS,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending is defendant Robert Boggs' motion for summary judgment, filed June 6, 2020. ECF No. 27.

This motion was previously referred to United States Magistrate Judge Dwane L. Tinsley for submission to the court of his Proposed Findings and Recommendation ("PF&R") for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). On January 22, 2021, the Magistrate Judge issued a PF&R recommending that the court grant the motion for summary judgment with respect to plaintiff Joseph Hussell's Fourth Amendment claim concerning the search of his home but deny the motion insofar as it seeks dismissal of the plaintiff's Fourth Amendment excessive force and Fourteenth Amendment due process claims. ECF No. 39, at 12. The Magistrate Judge further recommended that insofar as the

plaintiff seeks to bring claims on behalf of his daughter A.H., those claims be dismissed inasmuch as Joseph Hussell has a significant personal interest in the litigation and cannot represent his daughter as a pro se layman. Id. at 11-12. Additionally, the PF&R recommended that the court not deem requests for admission propounded by the defendant to be admitted under Federal Rule of Civil Procedure 36(a)(3) inasmuch as Joseph Hussell proceeds pro se and the defendant did not seek to compel the admissions prior to filing the motion for summary judgment. Id. at 7-8. The PF&R set a seventeen-day period for objections (fourteen days plus three days for mailing), which has expired without objection from any party. Id. at 12.

Upon an objection, the court reviews a PF&R de novo. Specifically, "[t]he Federal Magistrates Act requires a district court to 'make a de novo determination of those portions of the [magistrate judge's] report or specified proposed findings or recommendations to which objection is made.'" Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (first alteration added) (quoting 28 U.S.C. § 636(b)(1)). No objection having been filed by any party, it is ORDERED that the findings made in the PF&R (ECF No. 39) be, and they hereby are, adopted by the court and incorporated herein.

Accordingly, it is further ORDERED that:

1. Defendant Robert Boggs' motion for summary judgment (ECF No. 27) be, and it hereby is, GRANTED to the extent it seeks dismissal of the Fourth Amendment claim concerning the search of plaintiff Joseph Hussell's home.

2. Joseph Hussell's Fourth Amendment claim concerning the search of his home is DISMISSED. Joseph Hussell's Fourth Amendment excessive force and Fourteenth Amendment due process claims remain pending.

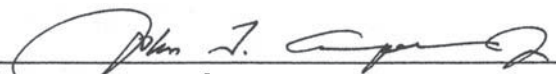
3. All claims asserted by Joseph Hussell on behalf of A.H. are DISMISSED without prejudice, and this case shall proceed with Joseph Hussell as the lone plaintiff.

4. The defendant's requests for admissions are not deemed admitted under Federal Rule of Civil Procedure 36(a)(3).

5. This matter remains referred to United States Magistrate Judge Dwane L. Tinsley for further proceedings.

The Clerk is directed to transmit copies of this memorandum opinion and order to all counsel of record, any unrepresented parties, and the United States Magistrate Judge.

ENTER: February 19, 2021


John T. Copenhaver, Jr.
Senior United States District Judge